

## § 224.7

## 49 CFR Ch. II (10–1–07 Edition)

### § 224.7 Waivers.

(a) Any person subject to a requirement of this part may petition the Administrator for a waiver of compliance with such requirement. The filing of such a petition does not affect that person's responsibility for compliance with that requirement while the petition is being considered.

(b) Each petition for waiver under this section shall be filed in the manner and contain the information required by part 211 of this chapter.

(c) If the Administrator finds that a waiver of compliance is in the public interest and is consistent with railroad safety, the Administrator may grant the waiver subject to any conditions that the Administrator deems necessary.

### § 224.9 Responsibility for compliance.

(a) Freight rolling stock owners, railroads, and (with respect to certification of material) manufacturers of retroreflective material, are primarily responsible for compliance with this part. However, any person that performs any function or task required by this part (including any employee, agent, or contractor of the aforementioned), must perform that function in accordance with this part.

(b) Any person performing any function or task required by this part shall be deemed to have consented to FRA inspection of the person's facilities and records to the extent necessary to determine whether the function or task is being performed in accordance with the requirements of this part.

### § 224.11 Penalties.

(a) Any person (including but not limited to a railroad; any manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any employee of such owner, manufacturer, lessor, lessee, or independent contractor) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least \$550, but not more than \$11,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent viola-

tion or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed \$27,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. Appendix A to this part contains a schedule of civil penalty amounts used in connection with this part.

(b) Any person who knowingly and willfully falsifies a record or report required by this part is subject to criminal penalties under 49 U.S.C. 21311.

EFFECTIVE DATE NOTE: At 72 FR 51197, Sept. 6, 2007, § 224.11 was amended by removing the numerical amount "\$11,000" and adding in its place the numerical amount "\$16,000", effective October 9, 2007.

### § 224.13 Preemptive effect.

Under 49 U.S.C. 20106, issuance of this part preempts any State law, rule, regulation, or order covering the same subject matter, except an additional or more stringent law, rule, regulation, or order that is necessary to eliminate or reduce an essentially local safety hazard; that is not incompatible with a law, rule, regulation, or order of the United States Government; and that does not unreasonably burden interstate commerce.

### § 224.15 Special approval procedures.

(a) *General.* The following procedures govern consideration and action upon requests for special approval of alternative standards under § 224.103(e).

(b) *Petitions.* (1) Each petition for special approval of an alternative standard shall contain—

(i) The name, title, address, and telephone number of the primary person to be contacted with regard to the petition;

(ii) The alternative proposed, in detail, to be substituted for the particular requirements of this part; and

(iii) Appropriate data and analysis establishing that the alternative will provide at least an equivalent level of safety and meet the requirements of § 224.103(e).

(2) Three copies of each petition for special approval of an alternative standard shall be submitted to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, RCC—

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10, Mail Stop 10, 1120 Vermont Ave., NW., Washington, DC 20590.

(c) *Notice.* FRA will publish a notice in the FEDERAL REGISTER concerning each petition under paragraph (b) of this section.

(d) *Public comment.* FRA will provide a period of not less than 30 days from the date of publication of the notice in the FEDERAL REGISTER during which any person may comment on the petition.

(1) Each comment shall set forth specifically the basis upon which it is made, and contain a concise statement of the interest of the commenter in the proceeding.

(2) Each comment shall be submitted to the DOT Central Docket Management System, Nassif Building, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590, and shall contain the assigned docket number which appears in the FEDERAL REGISTER for that proceeding. The form of such submission may be in written or electronic form consistent with the standards and requirements established by the Central Docket Management System and posted on its Web site at <http://dms.dot.gov>.

(3) In the event FRA determines that it requires additional information to appropriately consider the petition, FRA will conduct a hearing on the petition in accordance with the procedures provided in §211.25 of this chapter.

(e) *Disposition of petitions.* (1) If FRA finds that the petition complies with the requirements of this section and that the proposed alternative standard is acceptable or changes are justified, or both, the petition will be granted, normally within 90 days of its receipt. The Associate Administrator may determine the applicability of other technical requirements of this part when rendering a decision on the petition. If the petition is neither granted nor denied within 90 days, the petition remains pending for decision. FRA may attach special conditions to the approval of the petition. Following the approval of a petition, FRA may reopen consideration of the petition for cause stated.

(2) If FRA finds that the petition does not comply with the requirements of this section, or that the proposed al-

ternative standard is not acceptable or that the proposed changes are not justified, or both, the petition will be denied, normally within 90 days of its receipt.

(3) When FRA grants or denies a petition, or reopens consideration of a petition, written notice is sent to the petitioner and other interested parties and a copy of the notice is placed in the electronic docket of the proceeding.

### Subpart B—Application, Inspection, and Maintenance of Retroreflective Material

#### § 224.101 General requirements.

All rail freight rolling stock subject to this part shall be equipped with retroreflective sheeting that conforms to the requirements of this part. Notwithstanding any other provision of this chapter, the application, inspection, and maintenance of that sheeting shall be conducted in accordance with this subpart or in accordance with an alternative standard providing at least an equivalent level of safety after special approval of FRA under § 224.15.

#### § 224.103 Characteristics of retroreflective sheeting.

(a) *Construction.* Retroreflective sheeting applied pursuant to this part shall consist of a smooth, flat, transparent exterior film with microprismatic retroreflective elements embedded in or suspended beneath the film so as to form a non-exposed retroreflective optical system.

(b) *Color.* Retroreflective sheeting applied pursuant to this part shall be yellow, fluorescent yellow, or white as specified by the chromaticity coordinates of ASTM International's Standard D 4956-04, "Standard Specification for Retroreflective Sheeting for Traffic Control." The Director of the Federal Register approves the incorporation by reference of this standard in this section in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of the incorporated standard from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959 or at <http://www.astm.org>. You may inspect a copy of the incorporated standard at the Federal Railroad Administration,